67. Possible modifications to the rules in Part 51, if adopted, will affect all carriers. Possible modifications to the rules in Part 61 of the Commission's rules, if adopted, will affect all carriers that file and/or modify tariff filings. For example, modified rules may decrease or increase a carriers' tariff filing requirements. Modifications to the rules in Part 69 of the Commission's rules, if adopted, will affect all carriers that receive and/or pay access charges. Such revisions could require modifications to carrier billing systems and associated reporting and recordkeeping systems. Additionally, modification of the Commission's Part 69 rules may require carriers to modify and/or establish intercarrier compensation agreements.

68. As part of the Further Notice, the Commission seeks comment on reforming the high-cost disbursement mechanism, including the use of reverse auctions, and how best to implement changes to the universal service contribution mechanism. Compliance with a new universal service contribution mechanism will apply to all carriers, which may prove financially burdensome to small entities as they make changes from reporting information based on the revenue-based mechanism. Changes to the high-cost mechanism, and adoption of a broadband pilot program for low-income consumers may also necessitate additional reporting and recordkeeping requirements. Additionally, these proposed changes necessary to implement comprehensive reform also may require changes to Part 54 of the Commission's rules and will affect carriers subject to those rules.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

69. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities."[171]

70. The Further Notice seeks comment from all interested parties. Small entities are encouraged to bring to the Commission's attention any specific concerns they may have with the proposals outlined in the Further Notice.

71. Throughout these proceedings the Commission has received proposals to treat small entities differently. We believe that consideration of commenters' transition proposals for implementing intercarrier compensation reform, as well as alternatives for a carriers' recovery of intercarrier revenues reduced as a result of any reforms that might be adopted could be consistent with our goals of a unified and simplified intercarrier compensation regime that will reduce arbitrage opportunities and promote innovation and competition and our statutory requirement to secure the viability of universal service.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

72. None.

[171] 5 U.S.C. § 603(c)(1)–(c)(4).

STATEMENT OF
CHAIRMAN KEVIN J. MARTIN

Re: *High-Cost Universal Service Support*, WC Docket No. 05-337; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Lifeline and Link Up*, WC Docket No. 03-109; *Universal Service Contribution Methodology*, WC Docket No. 06-122; *Numbering Resource Optimization*, CC Docket No. 99-200; *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98; *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68; *IP-Enabled Services*, WC Docket No. 04-36

Today we tell the U.S. Court of Appeals for the D.C. Circuit and the Federal-State Joint Board on Universal Service that, after years of deliberation, we are still unready to move forward with comprehensive reform of intercarrier compensation and universal service. Instead, we issue another open-ended Further Notice of Proposed Rulemaking on a variety of approaches for comprehensive reform, and my colleagues promise to act on it by December 18.

I am disappointed by the Commission's unwillingness to step up and make tough choices to modernize our intercarrier compensation and universal service programs. I am also doubtful that the Commission will find itself any better equipped to act in another six weeks. However, I vote to approve this item because this is the only path my colleagues could agree on, and failure to respond to the Court in particular would result in an even sorrier state of affairs – immediate vacatur of our rules.

First, I am skeptical of today's response to the Court, which directed us to justify the Commission's interim intercarrier compensation rules for ISP-bound traffic. The Order treats ISP-bound traffic differently than all other traffic, including other IP traffic. The Order retains the interim rate cap of $0.0007 for terminating this traffic indefinitely. I doubt that an Order that retains artificial and unsupported distinctions between types of IP traffic and maintains an interim rate without establishing an end game will be seen any more favorably by the Court than the Commission's two previous attempts.

By singling out ISP-bound traffic for different treatment, we perpetuate the current patchwork of rates for different traffic. The Order argues that disparate treatment of ISP-bound traffic is justified to combat arbitrage. Yet arbitrage exists precisely because traffic is terminated at a variety of rates.

In addition, the $0.0007 rate cap for ISP-bound traffic was intended to be an interim measure pending comprehensive reform of intercarrier compensation. Indeed, the record does not support a differential rate for ISP-bound traffic except on an interim basis. And even then, $0.0007 can only be justified as an interim rate under a cost standard that we fail to adopt. A rate of $0.0007 is inconsistent with the current TELRIC standard, and the Order does not adequately explain why we retain this rate in the absence of moving forward with adopting a cost standard consistent with $0.0007. However, the Order simply states that the $0.0007 cap shall remain in place until we adopt more comprehensive intercarrier compensation reform. That is, we are establishing a perpetual interim rate. Although the Order is silent as to whether the $0.0007 rate is "interim," let's be clear – this is an interim rate to nowhere. I therefore believe that we have failed to respond to the Court.

In 2005, the Court denied an earlier mandamus petition based on the Commission's representation that it was committed to comprehensive reform. The Commission pointed to its Further Notice on comprehensive reform, including permanent rules to succeed the interim intercarrier compensation regime for ISP-bound traffic.

Three years later, the Commission once again finds itself asking the Court not to vacate our rules because the Commission remains committed to comprehensive reform. And once again, the Commission points to a Further Notice on comprehensive reform as evidence of its commitment.

I question whether my colleagues will be any more willing to adopt comprehensive reform in December. As explained below, I believe when December comes, the other Commissioners will simply pursue another Further Notice and another round of comment on the most difficult issues. If the Court wants a response – and is willing to give the Commission the benefit of the doubt rather than vacate our rules immediately – it should enforce our promise of reform on pain of automatic vacatur on December 19.

It is unfortunate that the Commission could not agree to adopt the comprehensive solution. I had proposed a comprehensive approach that would have transitioned all traffic to a final uniform rate, regardless of the type of traffic or jurisdiction. This approach would have answered the Court's direction – and I think it would have done so in a legally sustainable way.

Specifically, I would have concluded that all traffic falls within section 251(b)(5) and called upon each state to set a glide path to a reciprocal compensation rate applicable to all traffic under section 252(d)(2). Under this proposal, traffic terminated at rates below the glide path, such as ISP-bound traffic, would continue to be terminated at those rates, on an interim basis, until such traffic is swept into the glide path. Ultimately, the glide path would end at a lower, final uniform rate for all traffic.

Second, I view our failure to implement the Joint Board's recommendations as a tremendous missed opportunity. In particular, I supported the Joint Board's determination that broadband should be included in the universal service program. As I have said before, to fully appreciate and take advantage of the Internet today, consumers need broadband connections. Without this underlying infrastructure, efforts to implement advances in how we communicate, work, and provide education cannot succeed.

My proposal for implementing this recommendation would have spurred rapid and widespread deployment of broadband. I would have asked each carrier receiving high-cost universal service support to commit to provide broadband to all consumers in its study area within 5 years as a condition of continuing to receive support. If a carrier did not make that commitment, we would conduct a reverse auction to find out if any other carrier could do so. If nobody came forward, then we would have identified an unserved area, and could then determine what additional steps might be necessary to bring broadband to those consumers. In addition, I would have created a broadband Lifeline and Link Up program to ensure that low income consumers are not left out of our broadband future.

Finally, I am disappointed with the Further Notice issued today. After a decade of comment on these issues, we begin again from square one. To be clear, this is not a targeted Further Notice on a specific reform proposal. We are putting out for comment several proposals that would lead to radically different outcomes. In the Further Notice and in my colleagues' statement, my colleagues invite comment on conflicting questions, which reveal that they have no fundamental proposal for reform.

- Do we include broadband within the universal service program – or not?
- Do we provide support to competitive carriers based on their own costs? A reverse auction? Or do we phase out their support altogether?
- Should terminating rates be uniform by state – or uniform by carrier?
- Should we use an incremental cost standard for setting termination rates – or the existing TELRIC standard?

These questions have been debated exhaustively in the record for years. I fail to see how further comment over the next six weeks will help us resolve these issues.

Indeed, the longer we wait, the more difficult these issues become. Regulatory arbitrage will increase as long as rates differ by type of traffic and jurisdiction. Moreover, carriers are booking IP

traffic at vastly different rates that must be reconciled eventually. This type of traffic will continue to grow as carriers invest in broadband networks.

I would like to be encouraged by my colleagues' commitment that they will truly be ready to complete this much needed reform on December 18. The nature of the questions they included in the Further Notice makes me doubt they will have found their answers within an additional six weeks. I believe the far more likely outcome is that, in December, the other Commissioners will merely want another Further Notice and another round of comment on the most difficult questions. I do not believe they will be prepared to address the most challenging issues and that the Commission will be negotiating over what further questions to ask in December.

I recognize that few other issues before the Commission are as technically complex and involved, with as many competing interests, as are reforming the intercarrier compensation and universal service programs. But neither of those two realities are excuse for inaction.

JOINT STATEMENT OF COMMISSIONERS MICHAEL J. COPPS, JONATHAN S. ADELSTEIN, DEBORAH TAYLOR TATE AND ROBERT M. MCDOWELL

Re: *High-Cost Universal Service Support*, WC Docket No. 05-337; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Lifeline and Link Up*, WC Docket No. 03-109; *Universal Service Contribution Methodology*, WC Docket No. 06-122; *Numbering Resource Optimization*, CC Docket No. 99-200; *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98; *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68; *IP-Enabled Services*, WC Docket No. 04-36

Today's decision responds directly to the mandamus from the D.C. Circuit Court of Appeals regarding Core Communications, Inc. The item sets forth the Commission's legal justification for the rules it adopted in 2001 governing intercarrier compensation for telecommunications traffic bound for Internet service providers. It also preserves the ability to move towards a more unified intercarrier compensation regime.

We also issue a Further Notice seeking comment on specific proposals to reform the intercarrier compensation and universal service systems. While we do not pre-judge any of the proposals set forth therein, we do believe that there is a tentative but growing measure of consensus on a number of issues, including: moving intrastate access rates to interstate access levels over a reasonable period of time; not unduly burdening consumers with increases in their rates untethered to reductions in access charges; addressing phantom traffic and traffic stimulation; implementing an alternative cost recovery mechanism in certain circumstances; eliminating the identical support rule and moving over time towards support based on a company's own costs; emphasizing the importance of broadband to the future of universal service; and clarifying the implementation of the Alaska Native regions and tribal lands exception to the CETC cap adopted on May 1, 2008, and the need for special consideration for such areas. We would appreciate stakeholders attention to these issues of concern and consideration of whether modifications along these lines to the attached proposals are warranted. This Further Notice reflects our commitment to comprehensive reform of the intercarrier compensation and universal service systems in an expedited fashion.

Finally, the Commission today has completed a proceeding to consider the recommendations of the Federal-State Joint Board on Universal Service. We appreciate all of the valuable input that the Board has provided the Commission. We however choose not to implement the Joint Board's recommendations at this time. We thank the Board members for their tireless efforts and look forward to obtaining their valuable input on an on-going basis.

For the foregoing reasons, we are pleased to approve today's Report & Order and Further Notice of Proposed Rulemaking